

NOT INCLUDED IN
BOUND VOLUMES

Visalia, CA
PMMcF

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VWR INTERNATIONAL, LLC

Employer

and

Case 32-RC-095934

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS UNION, LOCAL NO. 948

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held February 14, 2013, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 47 for and 11 against the Petitioner, with 5 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the Regional Director's findings¹ and recommendations, and finds that a certification of representative should be issued.²

¹ The Regional Director found that the threat that employee Barajas would be fired if he did not support the Petitioner took place outside the critical period between the filing of the petition and the election. He also found that, because card solicitation typically precedes the filing of a petition, statements to employees that the Union could not protect them if they did not sign a card were also likely made outside the critical period. In evaluating the Employer's exceptions, we have assumed, as the Employer asserts, that both incidents took place within the critical period.

In addition, the Employer contends that the Regional Director's findings and recommendations reflect bias and prejudice. On careful examination of the Regional Director's report and the entire record, we are satisfied that the Employer's contentions are without merit.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Teamsters Union, Local No. 948, and that it is the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time material handlers employed by the Employer at its warehouse facility located at 8711 W. Riggin Avenue in Visalia, California; excluding all other employees, maintenance technicians, employees employed by an employment agency, office clerical employees, confidential employees, guards and supervisors as defined by the Act.

Dated, Washington, D.C., April 29, 2015

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

In overruling the Employer's objections alleging that certain statements by pro-Union employees warrant a new election, the Regional Director, applying *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), found that the alleged statements were "insufficient in number and kind to 'create a general atmosphere of fear and reprisal rendering a free election impossible.'" Member Miscimarra agrees with his colleagues that the Regional Director properly overruled these objections under the applicable multifactor standard set forth in *Westwood Horizons Hotel*, supra, for determining whether third-party threats warrant setting aside an election. Although Member Miscimarra otherwise agrees with that standard, he would abandon the phrase "general atmosphere of fear and reprisal" because it improperly suggests that an election cannot be set aside unless third-party threats affected nearly all eligible voters, no matter how close the tally and how serious the misconduct. See *Mastec Direct TV*, 356 NLRB No. 110, slip op. at 5-7 (2011) (Member Hayes, dissenting) (criticizing *Westwood Horizons Hotel* on this point). Contrary to the implication of the phrase, the Board has in fact properly set aside elections based on serious third-party misconduct affecting only a few determinative voters. See *Robert Orr-Sysco Food Services*, 338 NLRB 614 (2002); *Smithers Tire*, 308 NLRB 72 (1992); *Buedel Food Products Co.*, 300 NLRB 638 (1990); *Steak House Meat Co.*, 206 NLRB 28 (1973).

² The warehouse team leads are neither included in nor excluded from the bargaining unit covered by the certification. The parties did not resolve the unit placement of the warehouse team leads in their Stipulated Election Agreement, individuals in that classification were permitted to vote under challenge, and the number of challenged ballots proved insufficient to affect the results of the election. The parties may resolve the inclusion or exclusion of warehouse team leads by mutual agreement in bargaining or through a unit clarification proceeding before the Board.

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD